

REMARKS/ARGUMENT

This is a response to the Official Action mailed March 9, 2004. Reconsideration of the application including the rejection of the claims is respectfully respected. Applicants through their attorney have attempted to address every ground for rejection in the Office Action dated March 9, 2004 and believe that the application is in allowable form.

Claims 27-31 and 35-55 stand rejected under 35 USC §102(b) over Wyslowsky (3,983,994). Wyslowsky discloses a flexible package having two chambers separated by septum line which may be broken by pulling on pull-tabs (44). Wyslowsky discloses that the first chamber of the container may contain water (column 3, lines 4-5) and the second chamber may contain a second material such as a powder (column 3, lines 28-30).

In contrast, independent claims 27, 44, 46, 48, 52 and 54 include, *inter alia*, a first chamber containing lipids. The Examiner appears to concede that Wyslowsky does not disclose lipids in any of the chambers of the package by asserting that the limitation of first chamber containing lipids is "not given any patentable weight since it is the intended use for the container or package." Applicants respectfully traverse the Examiner's reasoning and rational as to why the limitation should not be given patentable weight. One skilled in the art reading the claims in light of the specification, drawings and file history, including this Amendment, would clearly interpret the claimed invention as including lipids and those lipids being present in a first chamber. The claims further include limitations directed at the lipids having the claimed composition levels after autoclaving.

In establishing a prima facie case of a rejection under §102(b) the cited reference must disclose all the elements of applicant's claimed invention either explicitly or inherently. Wyslowsky clearly does not explicitly or inherently disclose a container containing lipids in a first one of the chambers (in addition to the other elements of applicant's claims).

The Examiner indicates that the two chamber package of Wyslowsky is inherently "capable of holding lipids having various compositions and at various compositions after sterilization and storage" (emphasis added). Even if such a disclosure would anticipate the claimed inventions, which it clearly does not, the Applicants respectfully traverse such a conclusion. For a reference to inherently disclose a claimed feature, that feature must necessarily be present in the described device. As described by Wyslowsky in column 2, lines 39-45 the disclosed package may be formed of many different kinds of sheets of plastic. Within the vast range of such plastics, it is clearly not inherent that all such plastics could contain lipids of any composition, let alone the claimed lipids with the claimed levels of the compounds after autoclaving as set forth in the independent claims in applicant's claimed invention. Therefore the rejection of claims 27, 44, 46, 48, 52 and 54 is respectfully traversed and Claims 27, 44, 46, 48, 52 and 54 are considered allowable. Claims 28-31 and 35-43

depend directly or indirectly from independent claim 27 and are submitted as allowable as depending from allowable claim 27.

Claim 45 depends from claim 44 and is submitted as being allowable as depending from allowable claim 44. Claim 47 depends from claim 46 and is submitted as being allowable as depending from allowable claim 46. Claim 49 depends from claim 48 and is submitted as being allowable as depending from allowable claim 48. Claim 51 depends on claim 50 and is submitted as being allowable as depending from allowable claim 50. Claim 53 depends from claim 52 and is submitted as being allowable as depending from allowable claim 52. Claim 55 depends from claim 54 and is submitted as being allowable as depending from allowable claim 54.

Claim 27-55 stand rejected under 35 USC §102(b) as being anticipated by Smith et al. (5,176,634). Smith discloses a multiple compartment container for storage and mixing of different medicaments and diluent, but Applicants respectfully assert that Smith does not disclose a container having any lipids in any of the compartments. As before, Examiner asserts that the lipid being in a chamber of the claimed invention is not given patentable weight, as it is the intended use of the container or package. Applicants respectfully assert that the independent claims include, *inter alia*, a container having lipids within one of the chambers and this would be understood by one skilled in the art after reading the claims in light of the specification and drawings of the application and the file history, including this Response. Applicants respectfully assert that Smith does not disclose a container containing lipids in a first compartment and such lipids having the claimed composition after autoclaving as set forth in independent claims 27, 44, 46, 48, 50, 52 and 54.

The Examiner also asserts that Wyslotsky (sic) is "inherently capable of holding lipids having various compositions and various compositions after sterilizations and storage". Applicants believe that Examiner was referring to the Smith reference and will address their comments accordingly. Although Smith does describe films with more specificity than Wyslotsky, there is nothing in such reference nor has the Examiner supplied any support to indicate that such films would necessarily produce the claimed lipid compositions after autoclaving. Thus Smith does not inherently disclose the container as claimed in independent claims 27, 44, 46, 48, 50, 52 and 54. Therefore, the rejection of claims 27, 44, 46, 48, 50, 52 and 54 is respectfully traversed and these claims are considered allowable.

Claims 28-43 depend from claim 27 are submitted as being allowable as depending from allowable claim 27. Claim 45 depends from claim 44 and is submitted as being allowable as depending from allowable claim 44. Claim 47 depends from claim 46 and is submitted as being allowable as depending from allowable claim 46. Claim 49 depends from allowable claim 48 and is submitted as being allowable as depending from allowable claim 48. Claim 51 depends from claim 50 and is submitted as being allowable as depending from allowable claim 50. Claim 53 depends from claim 52 and is submitted as being allowable as

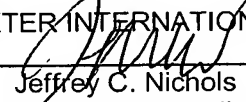
depending from allowable claim 52. Claim 55 depends from claim 54 and is submitted as being allowable as depending from allowable claim 54.

In addition, Examiner asserts that with respect to claims 36, 37, and 39-42, the limitation of how peelable seals are formed are considered to be product by process and have not been given any patentable weight. Applicants respectfully assert that the claims from which these claims depend are themselves allowable; therefore, whether additional limitations are given patentable weight is irrelevant, and thus the Examiner's assertions are considered moot.

In summary, Applicants respectfully assert that the Examiner has not cited references that disclose applicant's claimed invention either explicitly or inherently. More particularly, Applicants' claimed invention includes, *inter alia*, lipids and none of the cited references disclose a container containing lipids in one of the chambers. For the reasons set forth above, claims 27-35 are submitted as being allowable and favorable action is solicited. Should the Examiner discover that there are outstanding issues which may be resolved by telephone, she is invited to contact applicant's undersigned attorney at the telephone number listed below.

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Respectfully submitted,

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